

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 No. 1:16-cv-12504-WGY

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5 EXXON MOBIL CORPORATION,  
Plaintiff

6 vs.

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9 PAWA LAW GROUP, P.C., et al,  
Defendants

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13 For Hearing Before:  
Judge William G. Young

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15 Motion to Quash Subpoena

16

17 United States District Court  
District of Massachusetts (Boston)  
One Courthouse Way  
Boston, Massachusetts 02210  
Friday, December 16, 2016

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For Defendants

1 P R O C E E D I N G S

2 (Begins, 10:15 a.m.)

3 THE CLERK: Now hearing Civil Matter 16-12504,  
4 Exxon Mobile versus Pawa Law.

5 THE COURT: Good morning. Would counsel introduce  
6 themselves.

7 MR. CONLON: Your Honor, may we bring one more  
8 chair to the front from the end?

9 THE COURT: I don't think you're going to be here  
10 that long, but I want everyone to sit, so, um, yes, you  
11 may. But while we're bringing chairs, maybe you could  
12 start introducing yourselves.

13 MR. FRONGILLO: Thomas Frongillo, from Fish &  
14 Richardson, for Exxon Mobil.

15 THE COURT: Yes.

16 MR. ANDERSON: Good morning, Judge, it's Justin  
17 Anderson from Paul Weiss for Exxon Mobil.

18 MS. BROOKS: Jamie Brooks from Paul Weiss for  
19 Exxon Mobil.

20 MR. CONLON: And, good morning, your Honor,  
21 Patrick Conlon, I'm in-house counsel for Exxon Mobil.

22 THE COURT: You're certainly welcome, and I see we  
23 have a chair for you.

24 MR. CONLON: Thank you.

25 MR. ROSE: Good morning, your Honor, Alan Rose for

1 the nonparty subpoena recipients, Matthew Pawa and Pawa  
2 Law Group.

3 MR. MORIELLO: Antonio Moriello for Pawa Law Group  
4 and Matthew Pawa.

5 MR. CHINITZ: And Michael Chinitz for Pawa Law  
6 Group and Matthew Pawa.

7 THE COURT: Please be seated.

8 Let me tee this up a little bit. Late morning  
9 yesterday I received a copy of the order of my Texas  
10 colleague staying all discovery in this case and that  
11 led me to think that the issues in this hearing were  
12 moot, and so I asked Ms. Gaudet to reach out to you and  
13 say, "Well, isn't everything moot? Let's not have a  
14 hearing," and that was okay with Exxon, but not okay  
15 with Pawa. And both of you who have sent letters, I've  
16 read the letters and I have slightly revised my thinking  
17 and we'll docket the letters. It's Pawa who wanted the  
18 hearing, so let me talk to you folks.

19 This is how I look at this. Okay, we've got two  
20 judges. I know you're not a party to this, and maybe  
21 you're not a party to the underlying matters at all,  
22 something that seems to be in dispute --

23 MR. ROSE: We're not.

24 THE COURT: I understand that's your position, but  
25 we've got two excellent judges, and I know Justice

1 Brager in the Massachusetts Superior Court wrestling  
2 with the underlying dispute. So now there's no  
3 discovery in the federal court.

4 Your letter convinces me the matter is not moot,  
5 but it's still not timely, it seems to me, because with  
6 the discovery stayed, um, I don't really know that I'm  
7 in a position to adjudicate anything. Yes, you say  
8 you've invested money and you say the subpoena's way out  
9 of line, I hear that, but my disposition is to  
10 administratively close this matter -- and this is a case  
11 here now, it's my case, it involves you, to  
12 administratively close it to be reopened by either party  
13 upon the lifting of the stay, the resolution or  
14 adjudication of either of the underlying cases, which,  
15 um, might change the legal posture of the parties, and I  
16 at least have the advantage of having an adjudication by  
17 judges who are involved in the underlying dispute.

18 Now why shouldn't I do that?

19 MR. ROSE: Here's why, your Honor, and very  
20 respectfully.

21 Mr. Pawa is an environmental litigator --

22 THE COURT: Right, I've read the papers.

23 MR. ROSE: All right. Every day, every week,  
24 every month that the subpoenas remain outstanding  
25 furthers the chilling effect on his First Amendment

1 rights and his practice as a lawyer. The effect of the  
2 subpoenas -- the net effect of the subpoenas, taking  
3 into consideration Requests 5 and 6 in both subpoenas,  
4 the instructions and the definition sections mean that  
5 every communication that Mr. Pawa has with any Assistant  
6 Attorney General across the country -- say nothing about  
7 Healey, across the country, is subject to production  
8 under the subpoenas until the Texas litigation is  
9 finally concluded. That is the result from looking at  
10 the instructions in the subpoena, Requests 5 and 6 --

11 THE COURT: The Texas judge -- the Texas judge has  
12 stayed all discovery and subpoena practice is subject to  
13 judicial oversight, and my proposed order, if the stay  
14 is lifted -- and I'm not going anywhere, no one's lost  
15 any rights, then I have jurisdiction over these parties.  
16 Exxon came into this court wanting an enforcement of  
17 these, you say, improper subpoenas, and I have  
18 jurisdiction -- you're a Massachusetts law firm, your  
19 client, and so I have jurisdiction, and I was commencing  
20 to get ready for this hearing.

21 Now, it seems to me I'm going to be able to give  
22 you a hearing -- it's like you're enveloping the  
23 subpoena with more, in the real world, power than it in  
24 fact has, it's a subpoena that's been stayed by a judge,  
25 a United States District Judge.

1                   MR. ROSE: Your Honor, respectfully, the subpoenas  
2 are still outstanding, they have not been withdrawn  
3 notwithstanding the fact of the judge's orders in Texas.

4                   THE COURT: But they can't be enforced.

5                   MR. ROSE: I understand that they can't be  
6 enforced, but the very existence of those subpoenas,  
7 your Honor, until they're withdrawn, means that there's  
8 a chilling effect on Mr. Pawa. We have provided the  
9 Court with two declarations from Mr. Pawa, but even more  
10 importantly two declarations from other parties,  
11 Ms. Gleason and Ms. Spalding, and the -- and Ms. Gleason  
12 says there's a matter on which she wants to consult with  
13 Mr. Pawa, but how can she when Exxon is essentially  
14 trying to get at all communications with third parties?

15                  THE COURT: How is that different -- as a  
16 practical matter, how is that different from the, um,  
17 normal run of background noise to any public interest  
18 litigation that may touch upon the rights -- and they  
19 are rights, of major corporations that have the  
20 wherewithal to bring lawsuits? It's the judicial power  
21 that regulates subpoenas and here a judge of competent  
22 jurisdiction, who is familiar with the underlying  
23 dispute, has stayed all discovery. I -- it would be  
24 supererogatory for me, and indeed I think officious for  
25 me to now start getting into the merits of this

1 litigation especially where I'm not saying "I dismiss  
2 this," I'm not paying any attention. There's also the  
3 various -- they're saying here, "Well, send it to Texas"  
4 or "Send it somewhere else." I'm not saying anything.  
5 And not saying anything, but being available promptly to  
6 act on this dispute, seems to give you the best you can  
7 possibly have.

8 MR. ROSE: The best we can possibly have, your  
9 Honor, would be the allowance of the motions to quash in  
10 view of the -- what we regard, and we think we've proven  
11 it in the papers, the wholesale violations of Rule 45.  
12 But I have a question.

13 THE COURT: But let me just push back on that, but  
14 I am eager to entertain your question. But if I were to  
15 do that, you see, I'd have to get into the merits. It  
16 is at least conceivable -- I know you don't like it, but  
17 it is at least conceivable that Exxon might prevail  
18 across the board here. Either I transfer the whole  
19 thing or I say, "No, these subpoenas are perfectly fine  
20 and they can be enforced," the mind, the human mind can  
21 conceive that, and it seems the better part of value to  
22 stay in the wings understanding your not-frivolous  
23 concerns here.

24 And your question?

25 MR. ROSE: The question is what is the Court's

1       ruling on Exxon's motion to transfer? The cases say  
2       that under Rule 45F --

3               THE COURT: It's not a ruling, I propose to --  
4       well, I haven't done anything yet, but I don't propose  
5       to have a ruling, I propose administratively to close  
6       the case, to reopen it on certain -- I may not have all  
7       the significant events, but it would seem that it could  
8       be reopened the instant that discovery, um -- the  
9       discovery stay is lifted, or, because this thing  
10      shouldn't just hang out there, if the underlying case  
11      were to settle, or be adjudicated by either the  
12      Massachusetts Superior Court or the Northern District of  
13      Texas. If I get some adjudication, then at least -- and  
14      while it doesn't bind you in any way, it could well bind  
15      Exxon in an issue-preclusive sense, and I would then be  
16      able to rely on what that other judge had done relative  
17      to Exxon.

18               MR. ROSE: I'm very concerned, your Honor, about  
19       the -- the pendency of the motion to transfer. Exxon  
20      wants all rulings in this matter to be made by the judge  
21      in the Northern District of Texas. Rule 45 imposes a  
22      duty on this court. Absent exceptional circumstances  
23      under Rule 45F, which are very very limited --

24               THE COURT: Mr. Rose, I know you know this, but I  
25      will tell you. I understand what my duties are and, um,

1       in point of fact I am a visiting judge in the Western  
2       District of Texas. Judge Kinkeade is, in some respect,  
3       he is of course a colleague as a United States District  
4       Judge --

5            MR. ROSE: I understand.

6            THE COURT: -- and he is a colleague in -- at  
7       least in my visiting capacity in an adjoining federal  
8       district. Having said all that, um, I have jurisdiction  
9       over these parties in these matters and I propose to  
10      enter the orders that, in the wise discretion of this  
11      court, I think is appropriate. I just don't think today  
12      is the appropriate time. You can argue that and we'll  
13      hear from Mr. Frongillo as to transfer. He can't  
14      transfer it. He couldn't transfer it out from under me,  
15      he couldn't act on a motion to transfer and somehow have  
16      that bind me, that isn't how courts work. The matter is  
17      before me.

18           MR. ROSE: I understand -- I understand that, your  
19      Honor.

20           THE COURT: All right.

21           MR. ROSE: The motion to transfer, of course, was  
22      directed to this court, under 45F, to transfer the  
23      entire matter, all the motions to Texas, and we of  
24      course oppose that.

25           THE COURT: Oh, believe me, I understand you

1       oppose it, but it is a matter within the competency of  
2       this court, the District of Massachusetts.

3                    MR. ROSE: Your Honor, we accept -- we accept the  
4       Court's proposal with the understanding that at the  
5       appropriate time, if there is a discovery order issued  
6       in Texas which for some reason has the effect of  
7       reinstating these subpoenas, then we will be back before  
8       you for a ruling on the merits.

9                    THE COURT: Of course you will and, um, I express  
10      no opinion at all, but I can see that it's my duty to be  
11      available. I didn't flippant say "I'm not going  
12      anywhere," the matter, I propose to administratively  
13      close it. It can be reopened on motion of either party  
14      if the discovery stay is lifted, the underlying cases  
15      are either adjudicated -- because that may change the  
16      legal landscape, or settled, because your rights are  
17      independent of the rights of the litigants in the  
18      underlying cases. Now that's the proposed order.

19                   I haven't heard at all from Exxon, but I imagine,  
20      given the posture you've taken, um, that you understand  
21      such an order and you're fine with it?

22                   MR. ANDERSON: Yes, Judge, we have no objection to  
23      the entry of that order, we think it makes perfect sense  
24      to stay this matter. Exxon Mobil is not seeking to  
25      transfer this --

1 THE COURT: I'm not staying it, it's  
2 administratively closed, it may be reopened upon motion  
3 of either party and I've given you the incidences.

4 MR. ANDERSON: And, Judge, that makes perfect  
5 sense to Exxon Mobil, we think that is a sound way of  
6 resolving these issues, and it's consistent with how  
7 you're also handling the objections that were raised in  
8 other courts, they're also being placed analogously on a  
9 suspense calendar in the Southern District of New York.

10 THE COURT: All right.

11 MR. ROSE: Your Honor, just so I set forth my  
12 client's understanding of the effect of the Court's  
13 order, I understand the effect of the Court's order is  
14 that the subpoenas are not now enforceable.

15                   THE COURT: Well, I will -- I don't know that I  
16 made an order, but I think I should state on the record  
17 that that is my understanding, and if there were any  
18 attempt to enforce the subpoenas against Pawa, which are  
19 before me, I would be very surprised and that would be  
20 an incident that would bring you back before this Court  
21 forthwith.

22 MR. ROSE: Thank you, your Honor.

23                   THE COURT: All right. Thank you all. Good to  
24 see you. We'll recess.

25 (Ends, 10:30 a.m.)

1 C E R T I F I C A T E  
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5 I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,  
6 do hereby certify that the foregoing record is a true  
7 and accurate transcription of my stenographic notes  
8 before Judge William G. Young, on Friday, December 16,  
9 2016, to the best of my skill and ability.

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15 /s/ Richard H. Romanow 01-17-17  
16 RICHARD H. ROMANOW Date  
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